UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/37
28 January 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-seventh session
Agenda item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Situation in East Timor

Note by the Secretariat submitted pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1990/15

1. At its forty-second session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted, on 30 August 1990, resolution 1990/15 entitled "Situation in East Timor", the operative part of which reads as follows:

"The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

"1. Welcomes and encourages the exercise by the Secretary-General of his good offices as mandated by General Assembly resolution 37/30 of 23 November 1982 with a view to exploring the avenues for finding a settlement guaranteeing full respect for human rights in East Timor;

"2. Requests the Indonesian authorities to facilitate the access to the territory of international humanitarian and development organizations;

"3. Appeals to all sides to exercise restraint and, guided by the spirit of dialogue and negotiations, to co-operate fully with the Secretary-General in the exercise of his good offices with a view to finding a durable settlement to the conflict;

"4. Recommends to the Commission that it consider, at its forty-seventh session, the situation pertaining to human rights and fundamental freedoms in East Timor and to this purpose asks the Secretariat to transmit to the Commission all the reliable information received."

2. In accordance with operative paragraph 4 of Sub-Commission resolution 1990/15, the Secretariat wishes to transmit, in the annex to the present note, information which Amnesty International, a non-governmental organization in consultative status with the Economic and Social Council (category II) has provided in this regard.

3. Reference is also made to the reports presented to the Commission on Human Rights at its forty-seventh session by the Special Rapporteur on the question of torture (E/CN.4/1991/17), the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20) and the Special Rapporteur on summary or arbitrary executions (E/CN.4/1991/36). In the report presented by the Special Rapporteur on torture paragraphs 79 to 83 contain relevant appeals of the Special Rapporteur to the Government of Indonesia as well as the Government's replies thereto. The report of the Working Group on Enforced or Involuntary Disappearances also contains, in paragraphs 209 to 211, communications transmitted to the Government as well as references to reports of a general nature received from non-governmental organizations. Finally, the report of the Special Rapporteur on summary or arbitrary executions reflects, in paragraphs 214 and 216, communications transmitted to the Government and, in paragraph 221 (b), the Government's replies thereto.

Annex

INFORMATION RECEIVED FROM AMNESTY INTERNATIONAL, A NON-GOVERNMENTAL ORGANIZATION IN CONSULTATIVE STATUS (CATEGORY II)

A. Statement by Amnesty International to the United Nations Special Committee on Decolonization (August 1990)

Introduction

1. Over the past two years Amnesty International has documented the emergency of a pattern of short-term detention, ill-treatment and torture of alleged political opponents of Indonesian rule in East Timor. We have continued to receive credible reports of extrajudicial executions, "disappearances" and the systematic use of torture against political detainees by members of the Indonesian security forces. We remain concerned about hundreds of unresolved cases of "disappearance" and the continued imprisonment of at least 11 alleged supporters of the Frente Revolucionaria de Timor Leste (Fretilin), sentenced in trials which Amnesty International believes were not fair. Finally, in spite of repeated requests to the Indonesian authorities, Amnesty International has not yet been able to visit East Timor.

2. Some foreign visitors have been able to travel with relative freedom in certain parts of the territory, and this has been a welcome change. Yet very serious limitations on the accurate reporting of human rights violations remain. First, many violations are by definition "invisible"; incommunicado detention, torture, ill-treatment, and "disappearance" may not be readily detected or easily documented either by casual tourists or visiting foreign dignitaries. Second, postal and telephone communications continue to be monitored and most foreign visitors, tourists included, are subjected to surveillance by military intelligence. Third, and perhaps most importantly, no mechanism yet exists within East Timor for the systematic reporting of human rights violations. There is a pervasive fear that those who report such violations will themselves become victims: Amnesty International believes that there are good grounds to believe that this fear is justified.

Short-term detention, torture and ill-treatment

3. In its statement before the Special Committee on Decolonization last year, Amnesty International said that it had learned the names of some 200 people who had been detained in a series of mass arrests between October 1988 and July 1989, dozens of whom had reportedly been tortured or ill-treated in police or military custody. This pattern of short-term detention, torture and ill-treatment has continued in the past year. Dozens of suspected Government opponents and advocates of human rights, many of them young people and students, have been detained for their alleged participation in a series of apparently peaceful pro-independence demonstrations which began in October 1989 during the visit of Pope John Paul II. Most recently, several people were reportedly detained after high-school students raised the Fretilin flag at schools in Becora and Camea outside of Dili, on 17 July 1990.

4. In Amnesty International's view, the pattern observed has all the hallmarks of a systematic strategy to silence real or suspected political opponents of the Government and to obtain political intelligence through coercion and intimidation. Suspects are typically held incommunicado in

police or military detention centres or unofficial safehouses for periods ranging between a few hours and several weeks, and subjected to physical and psychological abuse before being released without charge. It is in these unofficial detention centres, which are not seen by visiting foreign journalists or parliamentary delegations, that detainees are most likely to be subjected to torture or ill-treatment. As a condition for release, many detainees are required to co-operate in the gathering of military intelligence and to report regularly to military authorities. Many are warned not to speak of their treatment in custody to humanitarian organizations, church leaders or foreigners. Even after they have been released, suspected political opponents live in fear that they may be detained at any time and on the slightest pretext.

5. Filomeno Paixao de Jesus and Hermenegildo de Conceicao, both detained in May 1989, were among the scores of people detained and reportedly interrogated prior to the visit of the Pope. Filomeno Paixao de Jesus was reportedly stripped naked and tortured with electric shocks to his genitals and anus while being questioned about the plans of the underground movement for the visit. Hermenegildo de Conceicao witnessed the torture; both were released after questioning. In June 1990, Hermenegildo de Conceicao was detained again and taken to a military arsenal in Dili, the Gudang Municipia, where he was reportedly beaten and kicked by a group of about 20 soldiers who accused him of being a supporter of the resistance. His hair was shaved and one of his ears was reportedly slashed with a knife. He was released without charge.

6. An estimated 20 East Timorese, most of them students, were detained for their alleged part in a pro-independence demonstration during the Pope's visit in October 1989. Most were reportedly held briefly in an unofficial detention centre in the Vila Verde quarter of Dili, where they were said to have been beaten, given electric shocks and deprived of food. A few days later, Bishop Belo, the Apostolic Administrator of Dili, reportedly confirmed the allegations that security forces had used torture. He is reported to have said: "I am shocked that the Indonesian military is extracting false confessions under torture. The boys were trying to express their discontent with the situation in East Timor. It is a lie that the Church was in any way involved in the demonstration". Although Indonesian officials initially denied that any arrests had been made, Amnesty International confirmed that at least three detainees remained in custody at the end of October 1989, three weeks after they had been detained.

7. The following account of harassment of alleged pro-independence demonstrators comes from a letter dated 6 November 1989 and signed by 23 people who sought refuge at the residence of Bishop Belo in the aftermath of the October demonstration. Several of the 33 people who had been expected to sign the letter were unable to do so because they had been detained by the police on the previous day. "We are a group of East Timorese youth who are being tracked down by the military authorities who wish to detain us. For the time being we are at the Bishop's residence in Lecidere [in Dili]. A few among us have already been detained and nothing is known of their fate.... All of this has happened to us because we do not agree with the violation of human rights in East Timor, and the inhumane way in which we have been treated. After the demonstration in Taci-Tolu on 12 October 1989, we have been followed and detained. Our lives have been threatened. We have been forced to abandon our day-to-day activities, either as employees or as students".

8. More young people were detained and reportedly ill-treated in November 1989 following two incidents involving security forces and students in Dili. On 5 November, at least six were detained. Among them were Antanasio (17), Antonio Castro (20), and Jose Minas (19). They were reportedly held at Nusra Bakti, a military-backed business used as a detention centre, where they were said to have been beaten with heavy wooden branches while under interrogation. Two other students, Jose Manuel Fernandes (20) and Donaciano Gomes (21), who were believed to be among those involved in the 12 October demonstration, were detained at the Wisma Senopati II, a military guest house also used as a detention centre. Both were reportedly tortured with electric shocks after being doused with cold water. None were known to have been charged with acts of violence. Some of those detained were reportedly held for three months and three were feared to have "disappeared".

9. On 14 November, fully armed units of the Indonesian army surrounded and attempted to enter the premises of the Externato San Jose, a Catholic High School in Dili alleged by military intelligence to be a centre of underground activity and sympathy for those opposing Indonesian rule. When the soldiers entered the building they found one student, Manuel Mausiri, hiding in the toilet. He was reportedly beaten until he lost consciousness. At least two students, Anatalino Beltrao and Pedro da Costa, and possibly as many as eight, were detained the following day. Pedro da Costa was reportedly beaten while under questioning, and several other detainees reportedly remained in custody in December.

10. Several people were seriously injured on 17 January 1990 when Indonesian security forces dispersed a peaceful pro-independence demonstration at the Hotel Turismo in Dili. Dozens were said to have been detained after further demonstrations on 18 and 19 January. The dispersal came after demonstrators had spoken for about an hour with visiting United States Ambassador, John Monjo, appealing for his Government's intervention on behalf of East Timor's independence and for the protection of human rights there. Three people were taken to hospital; two of them remained in hospital for several weeks reportedly suffering from serious head injuries and mental trauma. Several other people who received minor injuries were treated at the residence of the Bishop, where they sought refuge. On hearing that the actions of the security forces had resulted in injuries, a United States Embassy spokesman said: "We sincerely regret this ... In view of the peaceful nature of the demonstration the Ambassador [had] asked that no one be arrested or detained".

11. The students reportedly called for United Nations intervention on the political future of East Timor and outlined human rights violations in the territory. As they spoke, Government officials reportedly moved through the crowd noting names and taking photographs and making video recordings of both demonstrators and bystanders. An eyewitness said that as Ambassador Monjo prepared to leave, the students asked him to guarantee their safety because the hotel was by that time completely surrounded by soldiers and police in riot gear. One eyewitness said that as soon as the Ambassador left "... riot police and soldiers charged into the demonstrators, beating them with batons and rifle butts". Some, he said, managed to escape but about 40 "were clubbed and beaten into a human pile against the hotel's iron fence". A second eyewitness said: "There were shoes scattered all over the road as well as blood... The students in the mound protected their heads from being beaten with their arms... I saw a body which appeared very limp being thrown on the back of a truck".

12. Once again, the Indonesian Government denied that there had been arrests, but Amnesty International learned that at least five of those detained after the January demonstrations remained in custody in February 1990. They were Jose Manuel Fernandes, Donaciano da Costa Gomes, Francisco Maria de Sousa, Clementino Faria and Anatalino Beltrao da Costa, all of whom had been previously arrested in October and/or November. Donaciano da Costa Gomes claimed to have been ill-treated in custody and reported that other detainees had been tortured with electric shocks, immersed for long periods in foetid water, kicked and punched, slashed with knives and hung from the ceiling. Between January and March of this year, the International Committee of the Red Cross is reported to have visited 54 political detainees in five different detention centres in East Timor. A number of these were undoubtedly people arrested in connection with the demonstrations of October 1989 to January 1990.

13. East Timorese students living in Indonesia, especially those who have been politically active, have also been detained and ill-treated by police and military authorities. On 26 April, Mario Trindade (22), Felizberto Mascarenhas (23) and Fernao Trindade (17), all East Timorese students living in Bali, were arrested and badly beaten by police and military authorities following a fight in which a man was seriously injured; they were released five days later without charge. According to reports they were held first at the main police station in Denpasar, then at the headquarters of the Military Police and finally at the District Military Command (KODIM). Friends who saw them in their cells said that their faces were covered with bruises; at least one of them, Fernao Trindade, was bleeding from the nose and mouth and had difficulty standing, apparently as a result of being beaten in custody. Fellow students who tried to intervene with the authorities on behalf of the three were reportedly threatened with death by a military officer from the District Military Command (KODIM). The officer is reported to have said: "I served as a soldier of the Indonesian Army in Viqueque [East Timor]. At any moment I was ready to take the order to kill. If you continue carrying on like this, the Viqueque part of me will come out again and the moment that happens, I will gladly give the order to kill each and every one of you... And if I cannot do it alone, I will order the people of Denpasar to strip you naked and cut you down like stalks of grass".

14. Amnesty International has evidence which directly contradicts the assertion by the Indonesian Government and military authorities that they have not arrested demonstrators over the past year. It may be true, strictly speaking, that most of those detained by the security forces have not been formally arrested and appear not to have been charged with a recognizable criminal offence, but they have been held in arbitrary, unacknowledged detention. The explanation provided by the authorities that certain people reported to have been detained had only been "asked for information", obscures the essential issue. Whatever the terminology used, those held for interrogation in jails and detention centres are prisoners and Amnesty International believes that many of them may be or have been prisoners of conscience. Their imprisonment, however brief, and their torture or ill-treatment are matters giving rise to serious concern.

Torture

15. The torture and ill-treatment of alleged political opponents held in military detention centres has been a consistent feature of Indonesian rule in East Timor. The testimony of recently released political prisoners, arrested

between 1977 and 1983, provides fresh evidence of the systematic use of torture in extracting information in military custody. Eduardo da Costa, who was taken to Bali for interrogation in 1983, testified that he and other detainees were stripped naked for interrogation; men were beaten across the back with an iron pipe and received electrical shocks to their genitals. Eduardo da Costa said he was tortured again at the District Military Command (KODIM) in Dili before being tried and sentenced to seven years in jail in 1984.

16. Another informant, Agapito da Silva, was arrested for the first time in September 1977 by members of the 401st Battalion. He was taken to an Army post at Likisa where he was kicked and punched while being interrogated together with three others for several days. He was subsequently released but in June 1980 he was arrested again, along with seven others - including three women - on suspicion of having links with Fretilin. All eight were interrogated first at the District Military Command (KODIM) in Dili, then transferred to the KOREM where they were tortured repeatedly over a period of several weeks. According to Agapito da Silva they were kicked, punched and nearly drowned by their interrogators. Both men and women were forced to undress during interrogation; their genitals were burned with lighted cigarettes or given electric shocks. The women were sexually harassed by soldiers in their cells.

17. Amnesty International continues to receive numerous reports of the ill-treatment and torture of suspected rebel sympathizers in the countryside. According to one report, five men from the villages of Eukissi and Ili Lai in Lospalos district were beaten publicly by members of the 511th Battalion at about midnight on 12 April 1990. An eyewitness said that the men - named Tito dos Santos, Bou Reci, Rui, Jaime and Ano Dai - were kicked and beaten on the head, chest and genitals. The incident was reported to both military and civilian authorities at the village and the district level, but we are not aware of any disciplinary action having been taken against the alleged perpetrators. In 1989 a missionary working in Venilale made the following observation about people in the area: "They are afraid of interrogations, torture and electric shocks. At first I said 'You don't have to be afraid if you have done nothing wrong'. But there I was profoundly mistaken. Children really have to be afraid of losing their parents".

Unfair trials and political prisoners

18. Amnesty International has expressed serious doubts about the fairness of political trials in East Timor. Although the Indonesian Government has not allowed qualified international observers to attend such trials, Amnesty International has heard the testimonies of recently released political prisoners, tried in 1984, and has obtained trial documents which substantially confirm the conclusion that, by international standards, these trials were not fair. The evidence suggests that political trials in East Timor are deficient in some or all of the following respects: testimonies of both defendants and witnesses are often extracted under duress, sometimes under torture; prosecution witnesses are seldom cross-examined and there are few if any witnesses for the defence; trials are conducted in a language which is not always well understood by the defendants or the witnesses; the possibility of appeal provided for in the code of criminal procedure is not actively pursued by State-appointed defence lawyers.

19. Agapito da Silva was tried together with several others in August 1984. All were reportedly accused under article 110 of the Indonesian criminal code of conspiring to commit crimes against the State. They were found guilty in a trial which lasted three days and which was conducted entirely in Indonesian, a language which most defendants understood imperfectly if at all. Agapito da Silva was sentenced to six years in prison; the four years he had spent in custody without trial were not deducted from his sentence. According to Agapito da Silva, the only prosecution witnesses to testify at his trial were two of his co-accused who had both been in custody for more than four years and who had reportedly been tortured during interrogation. These witnesses, he said, were given instructions beforehand by the prosecutor which they simply carried out during the trial. Defendants were asked to sign statements which amounted to confessions and were told that if they did not sign they would not receive a trial at all. Prosecution witnesses were not cross-examined and there were reportedly no witnesses for the defence.

20. Eduardo da Costa wa tried together with several others in March 1984. All were found guilty in a trial which lasted seven days; Ed 'o da Costa was sentenced to seven years in jail. He alleges that he was g no opportunity to speak in his own defence during the trial. He also clai hat before his trial he was interrogated and tortured by two different military authorities; In Bali, where he was sent in August 1983 shortly after his arrest, and at the KODIM in Dili shortly before the trial. Like Agapito da Silva, he says that the only witnesses in the court were other defendants, many of whom had been tortured in military custody. According to Eduardo da Costa, some of the defendants had angered the authorities by asking to be tried according to principles of international law, not Indonesian law. They were reportedly taken from the court room and kept in an isolation cell until the trial was over and were then sent immediately to Cipinang prison. At least three of these - David Dias Ximenes, Albino Lourdes and Mario (Marito) Nicolau dos Reis - are still in prison serving sentences of between 15 and 17 years.

21. Amnesty International welcomes the release over the last year of at least 14 long-term political prisoners from East Timor who had been sentenced in trials which Amnesty International believes were unfair. According to our information these prisoners had served all but a few months of their sentences. With their release, Amnesty International believes that 11 East Timorese tried and convicted of supporting Fretilin now remain in acknowledged detention serving sentences of between 4 and 17 years. Six of the remaining sentenced prisoners are in Cipinang prison in Jakarta and five are in Dili's Bekora prison. This figure does not include people recently detained for political reasons and held without charge or trial in the numerous detention centres in East Timor.

22. Amnesty International is concerned that East Timorese prisoners serving sentences in Jakarta are effectively denied regular access to family and friends. Last year we noted the case of Albino Lourdes, aged 50 and ill with a bladder condition, and appealed on humanitarian grounds for the transfer to Dili of all East Timorese prisoners. Albino Lourdes, now 51, remains in Cipinang prison where he is serving a 17-year sentence. If he serves his full sentence, he will not be released until shortly before the turn of the century.

"Disappearances"

23. Amnesty International remains concerned by reports that people detained by Indonesian security forces in East Timor have subsequently "disappeared". We fear that many of the hundreds reported to have "disappeared" since December 1975 may have been killed. Of those more recently reported as disappeared, many have been found to have been in unacknowledged military or police detention.

24. Last year Amnesty International reported the possible "disappearance" of four East Timorese, and noted that they were probably in police or military custody. We have since confirmed that at least three of the four - Manuel Fatima Guterres, Elias Pereira Moniz and Herminio da Silva da Costa - were indeed in military custody. Manuel Fatima Guterres "disappeared" after being taken from his home in Dili on 25 May 1989 by military officials; in August 1989, Amnesty International learned that he was in jail and might face charges for alleged involvement with the resistance. Elias Pereira Moniz, an East Timorese studying in Bali, "disappeared" after being arrested by military intelligence officers on 14 June 1989; it was later discovered that he had been in unacknowledged military custody in Denpasar for several days before being released without charge. Herminio da Silva da Costa, an employee at the office of the Governor, was reported missing after his arrest on 24 May 1989. Amnesty International later learned that he had been in military custody for several weeks, on suspicion of supporting the political opposition.

25. The same may be true of several people reported to have disappeared in the last year. Domingos Mario Neto Mok was reportedly arrested by members of the military on 29 July 1989 and taken to an army post in Ossu. As of October 1989, his whereabouts were unknown and Amnesty International has received no further information since that date. Three students, Alcino Ximenes, Nelson da Costa and Franco Mateus, were feared to have "disappeared" after being detained by security forces in November 1989. According to one report, they were released from military custody in early January and then rearrested after the January demonstrations. They were reportedly still missing at the end of February. In January 1990, Vicente Ximenes was reportedly arrested by military officials. His wife inquired after his whereabouts at various military detention centres but failed to locate him. Joselino Soares (29), was reportedly detained by Indonesian security forces on 22 July 1990 when he disembarked at the wharf in Dili after arriving from Bali, where he had been studying. According to fellow students, his whereabouts remained unknown as of the end of July. According to the most recent reports from non-governmental sources, Joselino Soares was released after several days in the custody of Indonesian security forces. We are concerned for their safety and as a matter of urgency request clarification from the government on the whereabouts of all people last seen in military or police custody.

26. Amnesty International notes the continuing efforts made by the Indonesian Government to investigate cases of "disappearance" which have taken place in East Timor over the last 14 years. It is concerned, however, at the slow pace of such investigations and by indications that some of the information provided by the government may be incorrect. According to its January 1990 report, the United Nations Working Group in Enforced or Involuntary Disappearances considered only six cases to have been clarified by government information provided in late 1988, and possibly one more case on the basis of

information provided in 1989. As of January of this year, only 22 of a total of 71 cases submitted to the government by the Working Group had been clarified by government information. Of this number, six individuals were found to be in detention and 16 others were reported to be alive but not in custody. It is important to remember that this figure represents only a fraction of the hundreds of East Timorese reportedly "disappeared" since 1975, but in circumstances still too unclear to permit the Working Group to make substantive inquiries to the government.

27. In 1989, the government provided information on three cases, but in two of these - the "disappearances" of Maria Gorete Joaquim in 1979 and of Venanciano Gomes in 1980 - the government's information was at variance with information provided by unofficial sources. In a letter dated 10 July 1989, the Indonesian Government said that Maria Gorete Joaquim was alive and residing in Dili. However, according to her relatives she was shot by security forces in a churchyard in the town of Quelicai near Baucau in May 1979 after she "disappeared". The Indonesian Government said in the same communication that Venanciano Gomes, who "disappeared" in June 1980, had died in an exchange of fire between security forces and Fretilin guerrillas. Relatives and witnesses, however, have said that he was arrested in June 1980 and tortured in military custody. In the same month witnesses saw him being taken by military helicopter to Remexiu, where he was reportedly found killed with a knife.

Extrajudicial executions

28. At least 20 people, and possibly many more, were reportedly killed by Indonesian security forces in 1989 and early 1990 in apparent extrajudicial executions. Most of the victims of extrajudicial execution have been villagers living in areas of suspected rebel activity. In some instances, victims appear to have been tortured or ill-treated before being killed. Reports of extrajudicial execution in East Timor have always been difficult to verify but Amnesty International believes that the available evidence of the extrajudicial execution of suspected government opponents is strong.

29. Josefina Facundo is alleged to have been bound, raped and killed by members of the 144th Battalion near Poros, Lautem, on 29 January 1989. Her mutilated body - with breasts cut off and eyes poked out - was reportedly dropped at her village. According to reports, she had been ordered into the bush by soldiers to look for her husband, Gilberto, an alleged Fretilin supporter. In a separate incident on 17 July 1989, three unarmed young men cutting wood outside the permitted timbering area near Ossu were reportedly killed by government forces. They were apparently accused of being Fretilin spies, tied together and shot. Their decaying bodies were discovered, still bound, three days later. In another case, Francisco Magno, a civilian, the son of Lormanu and Bemali, was reportedly shot dead by government soldiers in Leotelo, Nunumogue, on 13 August 1989.

30. In late March 1990, four men from Lalerek-Mutin were reportedly tortured and one of them killed by security forces. Candido Amaral (39) a father of five, was arrested on 28 March and tortured by members of the security forces while being questioned about his alleged links to Fretilin. He was reportedly kicked, punched, and thrown to the ground until he became unconscious. When he was revived and still refused to confess, his captors reportedly burned his genitals with cigarettes. At dawn on 29 March Candido Amaral was taken to

Tua-Metan and executed by firing squad. He was said to have been shot so many times that parts of his body disintegrated. Amnesty International understands that disciplinary action has been taken against the alleged perpetrators of the torture and killing of Candido Amaral and is seeking further information on the exact nature of the punishment. At least three other people from Lalerek-Mutin - Joaquim Sarmento, Antero de Carvalho and Sebastiao dos Reis - are reported to have been detained and tortured in a similar manner to Candido Amaral, between 26 and 29 March 1990.

31. Last year Amnesty International presented evidence about seven apparent extrajudicial executions, all of which were noted in the 23 January report of the United Nations Special Rapporteur on Summary or Arbitrary Executions. According to that report the Indonesian Government provided information in December 1989 regarding two of the seven killings - those of Felix Ximenes who was reportedly killed by members of the 315th Battalion on 11 June 1989, and of Aleixo Ximenes, who was reportedly killed on 23 March 1989 by a member of the 328th Battalion. The government claimed that both men were alive. Amnesty International welcomes the government's prompt response but notes that it is at variance with independent reports from non-governmental sources. Amnesty International regrets that as of January of this year the government had failed to provide any information regarding the alleged killing of Carlos Mendes da Silva and Luiz da Cruz by members of the 726th Battalion on 31 October 1988, despite the existence of several witnesses and the fact that the circumstances of the killings were comparatively well documented.

Concluding remarks

32. Amnesty International believes that there is a demonstrable pattern of short-term detention, torture and ill-treatment in East Timor which may serve, or be intended, to intimidate real or suspected political opponents of the government, including non-violent opponents. It believes that many of those detained, albeit briefly, for their alleged part in peaceful pro-independence demonstrations since October 1989 may have been, or continue to be prisoners of conscience. It urges the Indonesian authorities to release promptly anyone held solely for their non-violent political activities or beliefs. It is concerned that in view of the consistent and recurrent pattern of ill-treatment of political detainees in East Timor, those still in detention, and those arrested under similar circumstances in the near future, may be in serious danger of torture or ill-treatment.

33. Amnesty International believes that in accordance with international human rights standards, and in the interest of safeguarding against future violations, the Indonesian Government has an obligation to investigate these and other allegations of serious human rights violations in East Timor, including extrajudicial executions, "disappearances" and torture committed by members of the security forces. Amnesty International urges the government to identify and bring to justice members of the security forces responsible for such violations. We ask that in the interest of demonstrating the fairness of future political trials in East Timor, they be made accessible to international observers. At a minimum we would hope that documents from political trials be made available to Amnesty International and other international organizations which may request them. We also urge the Indonesian Government to disclose the names and place of detention of all people detained with or without charge in the name of "security" over the last two years, and to release or bring to trial fairly any accused of political offences.

34. It must be stated in closing that, in spite of repeated requests to the Indonesian authorities, Amnesty International has not yet been able to visit East Timor; this has not been for want of trying. In March 1989, after positive discussions with government representatives, we submitted to the Government of Indonesia a proposal for an official visit to East Timor and Indonesia sometime later in 1989. To date we have received no reply to that letter. When we have reiterated our request, we have been told that the proposal is under consideration. We would urge the Government to demonstrate its commitment to the protection and promotion of human rights in East Timor by permitting international human rights organizations, including Amnesty International, to visit East Timor in an official capacity, and on a regular basis, in order to monitor the human rights situation there.

B. East Timor: Update on human rights concerns since August 1990

Introduction

35. This report provides a brief update on Amnesty International's concerns in East Timor since August 1990, when the organization testified before the United Nations Special Committee on decolonization (see East Timor: Amnesty International Statement to the United Nations Special Committee on Decolonization ASA 21/09/90).

36. The human rights situation in East Timor has not improved since August. The organization remains concerned about a continuing pattern of serious violations described in its August statement: persistent reports of extrajudicial executions, the systematic use of torture against political detainees by members of the security forces, hundreds of unresolved cases of "disappearance" and the continuing imprisonment of at least 10 alleged supporters of Fretilin sentenced in trials which Amnesty International believes were not fair.

37. Amnesty International is increasingly concerned about a pattern of short-term detention, ill-treatment and torture of alleged political opponents of Indonesian rule in East Timor which has gained additional momentum since August. It believes that many of those detained may be or may have been prisoners of conscience and it is alarmed by the number of detainees whose whereabouts remain unknown several days or weeks after their arrest by security forces.

38. The organization is also concerned by the Indonesian Government's continued refusal to allow human rights organizations, including Amnesty International, to visit East Timor to investigate human rights violations. It notes that this refusal is inconsistent with the government's frequent public assertions that East Timor is "open" and that foreign observers and international organizations are welcome to visit.

Short-term detention, ill-treatment and torture

39. Previous Amnesty International reports have described a pattern of short-term detention, torture and ill-treatment of alleged political opponents of Indonesian rule in East Timor (see East Timor: Short-Term Detention and Ill-treatment, ASA 21/02/90 and East Timor: Amnesty International Statement to the United Nations Special Committee on Decolonization, ASA 21/09/90). Suspects are typically held incommunicado in police or military detention

centres or unofficial safe houses for periods ranging from a few hours to several weeks. Most undergo physical and psychological abuse before being released without formal charge. A minority are held for longer periods but few are formally charged or tried. In Amnesty International's view, the pattern appears as a systematic strategy to silence real or suspected political opponents of the government and to obtain political intelligence through coercion and intimidation.

40. Amnesty International has learned the names of more than 100 people, most of them students, young people and civil servants, detained in the past six months for their alleged involvement in apparently peaceful pro-independence demonstrations or related political activities. Many of those detained have reportedly been ill-treated or tortured in custody and at least five have been hospitalized as a result of their injuries. The forms of ill-treatment and torture inflicted include beatings with iron bars, batons and fists, burning with lighted cigarettes, slashing with razor blades and immersion for long periods in fetid water. The testimony of one East Timorese detained and tortured by security forces in November 1990 is reproduced in Appendix I.

41. In view of past evidence and persistent reports that suspected political opponents of Indonesian rule in East Timor have been seriously ill-treated or tortured while under interrogation, Amnesty International is seriously concerned for the safety of all those detained for questioning, however briefly, by members of the security forces in connection with their alleged pro-independence activities.

42. Amnesty International believes that many of those detained in recent months may be or have been prisoners of conscience. Though the majority appear to have been released, at least 20 were believed still to be in custody in December 1990, some of whom had been in custody for several weeks. They were held in various military and police detention centres and unofficial safe houses in the town of Dili and the districts of Baucau, Lospalos, Viqueque, Maliana and Liquisa. In Dili detainees are frequently taken for interrogation to the Wisma Senopati I or Wisma Senopati II, buildings used by Indonesian military intelligence. After a period of interrogation, detainees are sometimes taken to the main police station in Dili (POLRES) where they may be placed in a cell for a matter of days or weeks before being released. In the outlying districts, political detainees are often interrogated and imprisoned at the headquarters of the District Military Command (KODIM).

43. The most recent wave of detentions began following a large pro-independence demonstration which took place shortly after the celebration of a Catholic Mass in Lecidere, Dili, on 4 September 1990. Although there were reportedly no arrests made at the time of the demonstration, dozens of young people and students were said to have been detained in subsequent days and weeks. In October Indonesian security forces conducted raids on a number of schools in Dili where students had allegedly expressed pro-dependence sympathies. Independent sources said that more than 50 people were detained during the month. In late October Indonesian military authorities in East Timor confirmed that 32 people had been detained for questioning in previous weeks and said that 14 remained in custody as of 20 October. Three days later another 13 people, including a girl aged 12 and several high school students, were detained by security forces. At least 50 others were

reportedly arrested in Dili, Liquisa, Ainaro and Motael during November. Among those detained were young people who had sought refuge at the parish churches of Motael and Ainaro following the arrests of October.

44. Among those arrested in September and November 1990 was Aleixo Gama, a student at the day school Externato San Jose, who had been detained on two previous occasions on 17 January and 4 June 1990. He was reportedly tortured after his arrest by Indonesian security forces on 10 September. Eyewitnesses who saw him in custody in September said that he bore signs of torture. He had reportedly been immersed in a tank of water: his face was swollen and had cuts and bruises and he was extremely weak from lack of food. He was reportedly released some time in late October or early November but was arrested again in Motael on 19 November together with at least eight others who had sought refuge at the parish church there. Aleixo Gama and three others - Augusto Mausiri, Jose Antonio and Carlos Aleong - were said to have been seriously ill-treated at the time of their arrest. According to reports all four were cut with razors and one, Augusto Mausiri, was burned with a lighted cigarette. Aleixo Gama was reportedly admitted to the military hospital in Dili on the same day.

45. Dozens of people, many of them local civil servants and teachers, were arrested in the district of Liquisa in the last three weeks of November, reportedly accused of sympathizing with Fretilin. At least four, Filomeno Oliveira, Gregorio dos Santos, Carlito dos Santos and Jorge Goncalves, were said to have been transferred to Comarca prison in Dili, but it was not known whether they had been formally charged. Similar arrests took place in other districts. In December a civil servant in the district of Maliana and his younger brother were arrested by military (KODIM 1636) personnel and accused of involvement in pro-independence activities. Both Adao and Carlos da Purificacao were reportedly beaten at the time of their arrest, interrogated and placed in a cell at the KODIM. Amnesty International is investigating the reasons for the arrest of these men, and others arrested for similar reasons, to determine whether they are prisoners of conscience, imprisoned for their non-violent political activities or beliefs.

Unacknowledged detention, "disappearances" and extrajudicial executions

46. Amnesty International is deeply concerned at the number of persons reported to be held in unacknowledged detention, some of whom may have "disappeared". According to reports, the whereabouts of more than 20 of those detained between September and December 1990 were unknown several days after they were taken into custody. Amnesty International believes that the majority of those detained in recent months may already have been released. Yet because political detainees are frequently held in incommunicado detention and because the authorities seldom make public the names of those detained or released, the whereabouts and the fate of detainees may remain unclear for some time.

47. Amnesty International has documented a number of cases of extrajudicial killing by members of the security forces in East Timor over the past year. Some of these are described in the organization's statement to the United Nations Special Committee on Decolonization. Since August Amnesty International has received dozens of additional reports of unlawful killings by security forces in the territory. Among the reported victims was Kasa Bui,

a women aged 30 from Ainawain in the district of Viqueque, who was reportedly raped, killed and dismembered by personnel of the 509th Battalion on 29 August 1990. There have also been reports that some of those detained in the past six months have been killed in custody or have died from injuries after being tortured.

48. These reports have been difficult to verify, in part because no mechanism yet exists for the systematic reporting of human rights violations in East Timor. However, in view of the evidence of past extrajudicial killings and the inherent gravity of the current allegations, Amnesty International believes that the government has an obligation to investigate promptly all such reports and to make public the results of any investigations.

Amnesty International and the Government of Indonesia

49. Amnesty International wrote to the Indonesian Government in December 1990 requesting information about the whereabouts and legal status of all those detained by security forces in East Timor in connection with the various pro-independence demonstrations and activities since October 1989. It asked to be informed whether any of those detained remained in custody and urged that anyone held solely because of their non-violent political activities or beliefs be immediately and unconditionally released. By the end of Jnauary 1991, however, the government had not responded.

50. In the same communication Amnesty International reiterated earlier requests for information concerning the results of investigations made into the apparent extrajudicial executions mentioned in its reports, or indeed into any others where investigations may have been conducted. It specifically requested information concerning the measures taken to bring to justice those implicated in the extrajudicial execution of Candido Amaral, described in the organization's statement to the United Nations Special Committee on Decolonization. Unfortunately, the Government had not responded to that request by the end of January 1991.

51. Amnesty International has repeatedly called on the Indonesian Government to demonstrate its commitment to the protection and promotion of human rights in East Timor by permitting international human rights organizations, including Amnesty International, to visit the territory in an official capacity, and on a regular basis, in order to monitor the human rights situation there. In spite of such requests Amnesty International has not yet been able to visit East Timor.

52. In a meeting with Indonesian Government representatives in October 1990 Amnesty International reiterated its request to visit East Timor. The government representatives said that it was "too early" for such a visit but did not give reasons for this assessment. Following that meeting Amnesty International wrote to the government proposing a round of preliminary talks on the question of human rights prior to a visit to East Timor, but by the end of January the government had not responded.

53. The government's persistent refusal to permit Amnesty International access to the territory stands in marked contrast to its frequent public assertions that East Timor is "open" and that foreign observers and international organizations are welcome to visit.

Appendix I

Testimony of an East Timorese man detained by Security Forces in November 1990

(translated from Indonesian) 1/

This is a statement regarding my arrest:

I was arrested on 3 November 1990 at 11.20 p.m. at the home of my aunt. They broke down the door of my aunt's house before coming in. They beat me without mercy. The instruments they used included: an iron rod, a crowbar, a knife and a wooden baton. They took me to the office of the Intelligence Command at Senopati I. The punishment was even worse there. They beat me again and again. My face and my nose were busted - there was blood everywhere. My face was full of blood, covered with bloody. The same night they threw me into a truck and drove me to the police station (POLRES). In the truck they beat me again in the head and the chest until I fell unconscious. When we arrived at the police station I didn't know where I was. They put me in a cell. They removed my belt, tied it around my neck and pulled me along with it. I was nearly unconscious, my body felt half dead. I was covered in blood and couldn't walk. On 4 November 1990 at about 11 p.m. I was removed from the cell at the police station and taken to Senopati II where I was interrogated ... I remained at Senopati II for eight days because I was too ill to return to the cell at the police station. My legs were badly injured and my chest was painful. I was transferred to a cell at the police station on 12 November 1990. There I was given only a small amount of food and water; the water was from the toilet. While in the cell my injuries grew worse.

1/ The original testimony provides details of the identity of the detainee which, in the interest of his security, are not reproduced here.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/38
7 February 1991

ENGLISH
Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-seventh session
Agenda item 14

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Note by the Secretary-General

1. At its forty-sixth session in 1990, the Commission on Human Rights adopted resolution 1990/39 entitled "Use of scientific and technological developments for the promotion and protection of human rights and fundamental freedoms" under agenda item "Human rights and scientific and technological developments".

2. In operative paragraph 1 of resolution 1990/39, the Commission on Human Rights invited the United Nations University, in co-operation with other interested academic research institutions, to submit to the Commission on Human Rights at its forty-seventh session a final report of its study on the positive and negative impacts of scientific and technological developments on human rights and fundamental freedoms, in accordance with Commission resolution 1988/59.

3. By a letter dated 13 December 1990, addressed to the Under-Secretary-General for Human Rights, the United Nations University informed that, in response to the invitation by the Commission on Human Rights, it studied both the positive and negative impacts of scientific and technological developments on human rights and fundamental freedoms, and published its findings as a booklet under the title "Human Rights and Scientific and Technological Development". It further informed that the publication would be available for sale by the United Nations University under United Nations Sales No. E.90.III.A.3. A few copies of the booklet are available for consultation in the Centre for Human Rights (English only).

4. The publication deals with the technological implications for development and human rights in Asia and Latin America, the norm-setting role of the United Nations and the responsibility of the scientific community for promoting human rights. It concludes that science and technology are forces that are now too powerful and too full of ramifications for them to be left to laissez-faire attitudes which permit them to take what direction they please. Therefore, it further concludes that there is an urgent need to guide and channel technology so as to make it an instrument for the furtherance of human rights, particularly in the developing world.

5. The substance and content of the publication is summarized and set forth in its conclusions and recommendations. It is for that very reason and with the permission of the University that they are reproduced below.

"Conclusions and Recommendations */

C.G. Weeramantry

This volume draws together many strands of thought regarding the affirmative role of technology in a world order which will focus increasing attention on human rights.

As we move towards the close of this century and as the next gets into its stride, old concepts of sovereignty will become less rigid. The watertight barriers that insulated nations will become more porous. This gradual transformation of the concept of sovereignty can well be one of the key features of future development in the spheres of international relations and international law.

The universal nature of technology will make it one of the key factors in breaking through state boundaries, for technology does not recognize national frontiers in its multifarious impacts upon life and society. Technology, which will thus play a great role in promoting universalism, will also have other important roles to discharge in making life better for all individuals in that more universalist society. It will at the same time be a powerful catalyst on the international scene and at the level of individual rights, and its role can be both a positive and a negative one. Either way its impact will be extremely powerful, with its capacity for influencing human rights at every level from the micro-level of the individual to the macro-level of international relations.

Since technology will play this key role in making our planet one world and in reducing the barriers that have thus far impeded this concept, it is time for the world community to give thought to directing technology on a course which will maximize its use as an instrument for the furtherance of universally accepted norms of human rights. This study and others have made it clear that science and technology are forces that are now too powerful and too full of ramifications for them to be left to laissez-faire attitudes which permit them to take what direction they please. This study makes it clear that there is much scope for the process of guiding and channelling technology so as to make it an instrument for the furtherance of human rights in the developing world.

The multiple choices of direction that open out with each fresh advance in science make the process of selection a particularly significant one. The developing world, from being a passive recipient of technology tailored to suit other societies, must take a guiding hand in influencing the fashioning of technologies that suit its own needs.

The problem before us is vast and only some selected perspectives can be presented in a single volume such as this. The course we have chosen to follow is the threefold approach of presenting global perspectives, international responses to the problem, and particular studies on some specific problems.

---

*/ The United Nations University, 1990. United Nations Sales No. E.90.III.A.3.

In the first category is the conceptual and theoretical study by Dr. Herrera. This stresses the prospective view and the role of normative prospective studies. Dr. Herrera emphasizes the need for considering the problems involved in an inter-disciplinary context, rather than, as is often currently the case, in terms of a single component such as economics, and asking for the support of other disciplines afterwards. He also raises the question of the need to steer ourselves away from the danger of falling into the 'defensive' approach of identifying the possible negative impacts of new technologies. The potential of the new technologies should be taken into account affirmatively in the establishment of socio-economic objectives.

Dr. Herrera provides much food for thought in pointing out that in this field, as in others, we must break out of the fashion of regarding the developing world as a dependent variable of what will happen in the advanced countries. In Dr. Herrera's language, 'a wide array of new options is opened and they offer the third world countries the opportunity to participate actively in the construction of a new and more equitable world order'.

Forecasting is not simply a theoretical exercise but must always be performed as a guide for action. The methodology used for the TPLA Project (Technological Perspective for Latin America) to which Dr. Herrera refers us gives us many insights into the sequence of steps involved in prospective studies, as well as in regard to the criteria of the desirable society which we postulate as our goal. Science and technology should be explicit variables incorporated in the whole integrated process of socio-economic planning, which should take the place of the present dichotomy between socio-economic and R & D Planning.

An important conceptual challenge thrown out in this chapter is the need to work towards the formulation and elaboration of the right of participation in all social decisions and of the right of access to intellectually creative work.

An important aspect to be borne in mind in addressing the question of turning technology to the furtherance of human rights is Dr. Herrera's observation that our aim should be to close the technological gap not in absolute terms but in the context of the required socio-economic and institutional adaptations. Too often we are led astray from the practical issue at hand by the insurmountable difficulties of striving to close this gap in absolute terms. The apparent impossibility of that task should not prevent us from attaining immensely valuable results through adaptations resulting from thoughtful interdisciplinary studies.

Dr. Herrera's analysis, although presented as a view from the third world, has a broader validity which makes it relevant to all societies.

Dr. Chamarik pursues this scheme more specifically in relation to the third world, emphasizing the concept of self-reliance in science and technology. The most pertinent sphere for the application of this principle in relation to developing societies is that of agriculture.

Dr. Chamarik steers us away from reliance on technological decisions taken for third world countries by élitist groups in those countries. The needs and wishes of those élitist groups may often be at variance with those of the grass roots, and if one is thinking of furthering human rights in a

manner meaningful to the bulk of the people in those societies, such élitist decision-making is not the answer. It leads to the pursuit of such aims as accelerated economic development towards industrialization. Such an approach can lead to the pitfalls of dependence and subordination.

Agricultural societies have never been without technological knowledge and inventiveness. Their traditional means of learning and skills in technological adaptation and innovation need not be minimized or ignored, for they are directly related to a people's real and relevant needs and environmental conditions.

From the standpoint of human and social progress, the modern and traditional must be looked upon as complementary to each other.

Conditions of self-reliant development are pursued through the Self-reliance Study of six Asian countries conducted under the aegis of the United Nations University. This leads to a shared development perspective rather than a solution which seeks self-sufficiency for each country exclusive of all others.

The various ingredients of technological self-reliance are interrelated. These involve principally an optimal use of local resources, the development of indigenous human resources and the development of grass-roots institutions.

Dr. Chamarik concludes that the real solution lies in the technological and productive capability within the rural communities themselves. The choice and assessment of technology, instead of being imposed or forced upon them, must be made by and within the rural communities themselves.

An important feature of Dr. Chamarik's analysis is that the socio-cultural factors necessary for technological self-reliance will be impossible to achieve without favourable politico-economic conditions. Lack of autonomy in the decision-making process, which has been forced upon many traditional Asian societies, needs to be revised, after centuries of dependence and underdevelopment, through a process of revitalization in the politico-economic sphere.

There is no inherent incompatibility between modern and traditional technology. The path of future development can be changed for the better by human intervention. Modern technology, in a symbiotic relationship with the traditional, must supplement rather than supplant indigenous technology. In short, the question is not whether Western science should be made use of, but how, on what conditions, and with what objectives.

The third essay in the series of global perspectives is Dr. Farer's examination of human rights and scientific and technological progress from a Western perspective.

Dr. Farer supplies a corrective to any tendency to think of technology and human rights only in terms of technologies that produce obvious impacts upon group-oriented third world ways of life. As Dr. Farer observes, other studies in this volume, which approach problems of technology and human rights from the standpoint of the third world, do not discount the importance of individual rights and individual autonomy.

One cannot lose sight either of the fact that within third world societies there are considerable groups whose attitudes and values run very close to those of the individually oriented approaches of the West. Dr. Chamarik, for example, has dwelt at some length on the dominance of such groups within developing societies.

Since there is an interrelatedness of human rights which does not permit the isolation of one group from another, it is important to our sense of perspective to consider the impact on human rights of some technologies which may apparently have relevance only to societies of the West.

There is no way of eliminating a concern with those technologies in reviewing the impact of technology on any section of the world's population. Technology knows no boundaries of nationality, class, or creed, and sooner or later a technology which is thought to be pertinent only to one section of the global population makes its impact upon another, however sophisticated or exclusive that technology may appear to be.

Dr. Farer selects three areas of technology for special consideration - nuclear weapons, procreation and child-rearing, and privacy.

All of these, though apparently far from the concerns of the developing world, affect it intensely. In relation to nuclear weapons there is no question that they tear the seamless fabric of universal human rights so grievously as to affect the basic human rights of all people everywhere. We cannot talk meaningfully of using technology for the service of third world peoples without addressing the problem of the conceptual framework underlying the philosophy that nuclear weapons are permissible in any circumstances. Unless that philosophy can be countered it is academic to address any other questions of using science and technology in the service of human rights.

The first problem Dr. Farer addresses is therefore as much a problem of the developing world as of any other segment of the world community.

Procreation and child-rearing by their very nature impinge intimately on the humanness and dignity of every human being. If there are potentially dangerous uses they are potentially dangerous everywhere, as for example one of the unorthodox uses Dr. Farer mentions, namely their use in imaginable totalitarian political and social settings. If there are potentially beneficial uses, they are potentially beneficial everywhere and one would be rash to postulate any time interval between their uses in developing and developed societies. Moreover, even if they do not have a sense of immediacy for third world societies, they have an immediate impact upon the concept of human personality.

The third technology, that which bears on privacy, has obvious importance for all societies, developing and developed alike, and indeed their potential uses for the former are far-reaching indeed. The capacity to deliver information from a source located anywhere on the globe to receivers in any other part of the globe gives this technology the most far-reaching potential for service.

Dr. Farer's article demonstrates also the inaccuracy of right-wing Western polemical attempts to argue that a fundamental difference exists over

the centrality of human freedom between North and South and that the discourse of human rights is used by the latter for effecting a transfer of resources from North to South.

These global overviews conclude the second part of this volume. We move from there to the international response, the subject of part 3.

We have moved a long way from the early United Nations attempts to harness science and technology for the benefit of the developing world.

The initial attempt, the United Nations's World Conference on the Application of Science and Technology in Less Developed Areas (UNCSAT), held in Geneva from 4 to 20 February 1963, brought together 1,665 participants from 96 countries, as well as a multitude of international organizations. However, to quote the words of one commentator (Professor Volker Rittberger in 'Development and Co-operation' (German Foundation for International Development, vol. 3 (1979): 14)),

> 'This world conference resembled more a global science and technology market than a consulting and negotiating forum to promote concrete development programmes. Accordingly this world conference - in contrast to the world conferences of the seventies - neither passed a declaration of intent nor an action programme. Demands of individual developing countries to create a new organization within the system of the UN which would specialize in the promotion of the application of science and technology for development purposes fell on deaf ears.'

In the quarter-century that has elapsed there has been much serious consideration of the problem from both theoretical and practical standpoints. While developmental aspects have loomed large, it is seen that development is only one segment of the much broader frame of human rights within which the problem must be considered. Various action programmes have been set up and institutional mechanisms set in place. In 1971 the Advisory Council for the Application of Science and Technology to Development (ACAST) published a 'World Plan of Action for the Application of Science and Technology to Development'. Numerous international declarations have ensued. At the thirty-first session of the General Assembly in 1976, a formal resolution was passed calling for the establishment of a United Nations Committee on Science and Technology for Development (UNCSTAD). All these topics are the subject of continuing discussion and ongoing action programmes.

Dr. Yamane's chapter on the Normative Response of the International Community provides an essential conceptual background to this study by tracing the evolution of the instruments which have been fashioned to cope with human rights problems caused by scientific and technological progress. As a prelude to this, Dr. Yamane goes through the important process of a stocktaking of the human rights which are particularly in danger of erosion by scientific and technological progress.

The catalogue of rights that might be directly affected is considerable, and when one adds to this a list of rights that might be adversely influenced, the list is such as to cause concern, for a large section of the spectrum of human rights is under direct or potential attack.

The international instruments which are a means of protection against the abuse of science and technology are both general and specific. Specific instruments relate to the right to life, the right to physical and spiritual integrity, the right to privacy, and the right to information.

Dr. Yamane also lists the instruments fashioned as a means to assure positive uses of scientific and technological progress for advancing human rights, dividing them again into instruments of a general and a specific character. In the latter category are those which cover the right to benefit from scientific progress and the right to an adequate standard of living.

Dr. Yamane points out that the major preoccupation of the United Nations in dealing with the impact of science and technology on human rights has turned to economic development, coinciding with the ongoing effort of the international community to establish a new international economic order. The Charter of Economic Rights and Duties of States of 1974 confers important rights and imposes important duties upon states, both developing and developed. An important duty is the duty of the developed countries to co-operate with the developing countries in the evolution of scientific and technological infrastructures and other activities so as to expand the economies of the latter group.

Developments such as these open up areas for important conceptual debate. In particular, calls for the active intervention of the state in many spheres of life clash with the liberal-individualistic approach to human rights. Dr. Yamane rather laments the effort spent on superficial conceptual compromises rather than on devising effective ways and means of implementing human rights. She points out that at the same time further conceptual fuzziness is introduced by the indiscriminate proclaiming of rights of all kinds. Perhaps a way out of this impasse is, she suggests, a specification of the areas for implementing different categories of human rights and a dissociation from the broad general issues of economic development such as technology transfer and exploitation of natural resources.

This call for a sharpness of focus in our thinking about human rights is timely, for overenthusiasm can damage the entire cause by blurring conceptual clarity. We need to develop human rights and at the same time preserve their conceptual integrity. Expansion of categories which is too rapid or indiscriminate can undermine the foundations of the basic conceptual structure.

Conceptual development in the field of human rights is shown by Dr. Yamane to be haphazard. One is reminded of the way in which the common law system was built up through 'a wilderness of single instances' rather than through a cohesive body of unifying principles. Later, the text writers got to work on this unwieldy mass of material and reduced it to some form of coherence and logical consistency. Perhaps the field of human rights awaits such pioneering academic labour. Perhaps, as Dr. Yamane suggests, the crucial issue centres on the control of information, for, without information, considered decisions on matters of science and technology are impossible. Her call for the elaboration of an international instrument which will reinforce the right to information could be a major conceptual outcome of this study.

With the benefit of the conceptual insights resulting from Dr. Yamane's study we pass on to Dr. Kubota's careful analysis of the institutional response.

Having traced the steps leading, especially through Japanese and Yugoslav initiatives, to the present project, he points out that the question of the effect of scientific and technological developments on human rights was not considered in detail until the International Conference on Human Rights in 1968. This resulted in the Proclamation of Tehran. The General Assembly by its resolution 2450 (XVIII) of 19 December 1968 invited the Secretary-General to undertake detailed studies in such areas as privacy in the light of advances in recording technologies and the protection of the human personality in the light of advances in biology, medicine and biochemistry.

From that initial stage Dr. Kubota takes us in detail through the developments, studies, and reports that emerged during the period 1971-1987. A landmark event was the General Assembly's 1975 Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, which the Commission on Human Rights, in its resolution 10 B (XXXIII), described as a guide for its future work. The Commission on Human Rights also emphasized that States should take account of the provisions and principles contained in that Declaration. Major reports prepared by the Secretary-General and the specialized agencies concerned are carefully noted. The growing volume of United Nations documentation has reached such proportions that some guidance is required through this mass of material, and Dr. Kubota's chapter provides the researcher with the assurance that he has not lost sight of significant documentation in this field.

Dr. Kubota, while not denying the importance of the work undertaken to date, emphasizes the need for guidelines and rules of conduct in scientific and technological activities. These guidelines should preserve 'the balance which should be established between scientific and technological progress and the intellectual, spiritual, cultural and moral advancement of humanity'.

The need for information emerges strongly from Dr. Kubota's article as it does from some of the other contributions in this book. This is because there is a need for everyone to defend himself or herself against the negative effects of science and technology, and to do so one needs access to information on potential dangers. Dr. Kubota therefore sees freedom of information as lying at the heart of the protection and promotion of human rights.

The decision-making process, the appellate process, the legislative process, and the administrative process all require this free flow of information. Dr. Kubota notes in this regard the efforts of the United Nations Educational, Scientific and Cultural Organization and the International Social Science Council in this field. These are important pioneering efforts which need to be more widely known.

Dr. Kubota argues that policies, approaches and attitudes which create or maintain an artifical dichotomy between legal and human rights considerations and scientific and technological activities should be abandoned or rectified. Such 'artificial compartmentalization' no doubt colours the thinking of many decision makers. Dr. Kubota sees the establishing of new guidelines as a means of facilitating the transfer of scientific and technological activities from the purely technological and scientific arena into the legal and political arena.

This is important work and is in line with the series of projects of the United Nations University on scientific and technological developments, which have the common objective of setting forth guidelines enabling scientific and technological policies to make a maximum contribution to human and social development needs. The current project, as Dr. Kubota points out, represents the first occasion on which the United Nations University has decided to respond to an invitation by a United Nations human rights body to launch a project of this kind. It is therefore specially important that it should bring about new and fruitful achievements in this field.

Part 4 deals with specific problems, of which the structure of the scientific enterprise, development and human rights, and the environmental problem have been selected as three important areas worthy of special attention.

Any study of the ways of turning science and technology to public advantage needs to address the question of the structure of the scientific enterprise, for scientific decision-making cannot be undertaken without this knowledge. The scientific enterprise has a logic and a scheme of its own.

Dr. Nakayama undertakes this study in his contribution to this volume. By taking us through the various stages in the production of industrial science and defence science he assists us in focusing attention on areas of secrecy and impenetrability. Much though we may desire to make the human rights influence felt in these areas of decision-making, there are very real obstacles stemming from considerations of corporate profit or strategic secrecy, which make the social assessment of science difficult at many stages of production. Assessment is difficult enough. Making an impact on the processes of decision is even more difficult.

The theoretical openness of scientific knowledge and its theoretically universal nature thus tend to be negated across a considerable spectrum of the scientific enterprise. This amounts in effect to a denial to scientists of basic human rights of dissemination and discussion of scientific information. The impact on scientists' rights is more far-reaching than this, for it touches human rights in other ways as well, including questions of hazards to which scientists are exposed in consequence of such secrecy. The public too are the sufferers, for the damaging effect upon the environment of certain scientific processes is not known to the public owing to such secrecy, and hence is not the subject of preventive action.

Service science was to a large extent free of many of these obstacles, but many aspects of service science are being industrialized now. Even in such an area of medical service as organ transplants, the production of artificial organs is rapidly becoming big business.

All of this raises significant conceptual problems. Dr. Nakayama brings up the important question of the disadvantaged position in scientific decision-making of those who lack the necessary knowledge - and that goes for most of us. Do we have a right not to be at a disadvantage because of our ignorance?

The answer currently tends to be along the lines that ignorance must be cured by information. If people continue to remain ignorant they must pay the price for this. But the proliferation of knowledge is occurring on such a

scale that it is idle to postulate a duty to acquire knowledge in every area of technology that may impinge on our lives. The degree to which individuals are disadvantaged by ignorance will grow in every society, and especially in the conditions of the developing world the danger is already acute.

Inaccessibility to information and maldistribution of information are vital areas needing attention if technology is to be turned in the direction of service to the community. Information pollution, as Dr. Nakayama terms it, is a real danger present in every society. It is a growing danger everywhere and in present world conditions is one of the acutest problems that third-world populations face.

Human Rights, Technology and Development is the second selected topic in part 4. This essay, written by the editor, seeks to explore the impact of technology in the light of the three principal elements involved in the General Assembly's Resolution of 1984 on the right to development: participation, contribution and enjoyment.

In order to increase participation in scientific decision-making one has to explore the decisional routes through which new technology enters a developing country. The decision is often taken under pressures external to the developing country in question, and research is needed to ascertain with more precision the factors influencing decisions and the points at which such decisions are taken.

Such considerations point again to the need for more diffusion of information regarding both the decisional factors involved and the alternative technologies available.

Technology surveillance, early recognition and alert systems, international exchanges of technological assessment, and technical co-operation among developing countries all need to be stepped up. An important part of the next stage of research upon the current project may well be an investigation of the means by which such institutional mechanisms can be set up. Whether such centres are set up nationally or regionally, there needs to be a network of them spanning the entire spectrum of developing countries. Some countries may lack the necessary resources for all these purposes, but the paucity of their resources is no reason for the denial to their citizens of their undoubted human rights, which will be impaired by the lack of such mechanisms. This is therefore an important area for regional and international co-operation, for if human rights are involved - as this volume seeks to demonstrate - there can be no excuse for the global community's neglect of its obligation to assist such countries in this essential task.

As with decision-making, so also with contribution to the technology itself, the scope for third-world participation must be increased. We need research to identify the optimum points for such input and to maximize their availability. Participation in product designing, the multifarious stages involved in joint routine enterprises and the legal considerations associated therewith, and education for participation, as well as appropriate technology, need to be examined from this point of view. The formal network for the distribution of information does not reach the grass-roots and other methods must be explored.

The third leg of the tripod - enjoyment - is perhaps the most important. Much technology which is suitable does not reach the bulk of the people who should be enjoying it. This is indeed the greatest challenge in the process of making technology serve the purpose of human rights. It necessitates an examination, among other things, of the social responsibilities of scientists and of the many ramifications of information technology. Although information technology should be a means of bending technology to the service of human rights, it often tends to polarize the developing and developed worlds. Moreover, the computer is not merely a means of storage and dissemination of information but also an active tool in the generation of new technology.

Other areas of vital importance, because they obstruct the receipt of new technology, are the armaments trade, the politics of food, and the inadequacies of legal concepts and structures moulded to the needs and priorities of the developed world. These are briefly surveyed.

The chapter ends with some desiderata which will help in the achievement of the overall purpose of this project.

The problems of the environment are largely the result of technological 'advance'. They damage human rights at every level. If we are to turn technology to the affirmative science of human rights, one of the most vital areas to which we should be devoting our attention is the use of technology to repair or prevent environmental damage.

Dr. Vukasovic addresses this problem in a chapter which probes the interdependence between the environmental issue and all human rights - the rights to life and health and all other social, economic, cultural, political and civil rights. Not without reason is environmental law proving to be one of the most dynamic areas of both municipal and international law.

Environmental rights can be viewed both as collective and as individual rights. Thus, while for example the African Charter speaks of environmental rights as rights belonging to peoples, the Declaration of the Stockholm Conference on the Human Environment speaks of environmental rights also as individual rights. It is thus clearly a right belonging to both individuals and groups. This raises definitional problems as well as problems of collision of rights, and necessitates the creation of institutional machinery not only at the level of the United Nations but at regional and subregional levels.

Dr. Vukasovic sees it as essential to the whole field of development of these newly emergent rights that they be more precisely defined and more efficiently regulated. This is an essential step in the promotion of human rights.

Apart from such conceptual and structural development there are numerous areas of great potential for technology to be harnessed in the service of environmental human rights. Some of these technologies exist in the military sphere and need to be used for developmental purposes. The use of space technology for remote sensing of the earth is an example; the technology for combating and preventing damage caused by ultra-hazardous activities is another.

Attention will need to be directed into areas of prevention and regulation, and this necessitates both the development of rights to information and duties of disclosure. People have the right to know the real state of the environment, and secrecy in matters critical for human existence needs to be counteracted.

Here again, developing countries face a special problem from lack of personnel as well as of regulation structures. This calls for co-operation from the developed world. Technology assessment at national and international levels is vital but is not easy to achieve without such co-operation. Decision-making concerning technological policy must not be made in closed governmental circles. There must be voluntary and democratic involvement of people, improved international relations through human rights co-operation, a development of international humanitarian law, and a linkage of environmental law with concepts of sustainable development.

Within the broad contours mapped out in these chapters a number of potential research projects are contained. There is no doubt that the topic of this book offers one of the most vital areas for the development of human rights in this period when science and technology dominate nearly every aspect of our lives.

Seeing the importance of the topic and the multitude of areas of research lying within it, an informed choice is required regarding the next stage of this enterprise.

There is no doubt that it needs to proceed to the stage of more specific investigations of certain selected areas of immediate relevance to developing societies.

Such researches could be in the area of an exploration of the politico-economic decision-making process, which needs attention if self-reliance in technological decision-making is to be stimulated. It may necessitate a research project on existing structures of technological decision-making in developing societies. It may call for an investigation of developmental goals which those societies may pursue. It may also travel beyond individual societies into the areas of co-operation among developing societies, generating broader principles than studies of particular countries in isolation. There is an immense wealth of research topics awaiting attention. The task of informed decision in the midst of this embarrassment of riches is not an easy one.

But such researches are by themselves inadequate. We need also an investigation of the multitude of new structures, national and international, which will need to be devised or improved if the ideals considered in this book are to be implemented.

Here again the possibilities revealed by our study are multifarious. Structures that look back to the past so that we can learn from former mistakes, and structures which look forward to the future, grappling with problems and technologies we can only dimly understand, lie at the extremes of a spectrum of options which necessitate a considered choice.

Especially within developing societies, where the need for surveillance or regulatory mechanisms is most urgent and acute, there is a dearth or a total absence of such mechanisms. Much thought needs to be given to this problem with a degree of special urgency, for as long as such structures are not in place every advantage will be taken of their absence to introduce technologies in the interests of private profit which impede the flow of human rights benefits to the bulk of the populations of developing nations.

We have dealt thus far with the broad socio-political setting and with the new institutional structures required.

However, the suggestions in this volume do not end there. We need also further revision and development, on the conceptual plane, of the human rights themselves. New formulations of rights and new refinements of existing rights will need consideration. Examples are the right of access to intellectually creative work and the right of participation in social decisions.

Moreover, new approaches will need to be made to the consideration of such concepts as the right to property (an intellectual property), the right to freedom of contract, and the right to academic freedom. There is work here on a theoretical plane for jurists and for human rights specialists.

But structures and concepts are of no value unless there are also personnel to make them work in directions of maximum value. Here we have the need to train personnel for all the purposes and procedures that may emerge from this study. Among them are the training of personnel to man the new structures, the carrying of the messages emerging from this study to the grass-roots where they must be implemented, education in new attitudes of self-reliance and of activism to overcome traditional passivity and resignation to the power and inevitability of technology. New cadres of third-world personnel must emerge imbued with the resolve that technology can be harnessed in the service of their communities and their socio-economic goals.

We commend all these possibilities to the Human Rights Commission with the confidence that an informed choice will be made for the next research stage in this project. As we prepare to celebrate the fortieth anniversary of the Universal Declaration of Human Rights, there could be few projects worthier of continuing research than the study of the ways in which the most powerful force of this age can be turned to the service of its most powerful ideological declaration."

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1991/39
5 February 1991

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-seventh session
Agenda item 14

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS

Report of the Working Group on the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care

Chairman-Rapporteur: Mr. Henry Steel

(United Kingdom of Great Britain and Northern Ireland)

GE.91-10275/2816B

INTRODUCTION

1. The Commission on Human Rights, at its forty-fifth session in 1989, decided, by its resolution 1989/40 of 6 March 1989, to establish an open-ended working group of the Commission to examine, revise and simplify as necessary the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care, submitted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1988/23), with a view to transmitting it to the Commission at its forty-sixth session. It requested the Working Group to meet for a period of two weeks before the forty-sixth session of the Commission.

2. At its first session, the Working Group held 21 meetings from 8 to 19 January 1990 and on 21 February 1990. In the light of the provisions of the aforesaid resolution, the Working Group at the first session considered and adopted articles corresponding to articles 1 and 3 to 14 of the Sub-Commission's draft. It also decided to reformulate article 14 of the Sub-Commission's draft and incorporate it into article 13 as paragraph 3. The Group considered some paragraphs of article 15 of the Sub-Commission's draft and adopted revised paragraphs 1 and 2 of that article.

3. In the course of its work on the articles referred to above, the Working Group also formulated and adopted two new articles, which it provisionally numbered as articles 5 (bis) and 6a without prejudice to their placement. Similarly, a general limitation clause, which would avoid the need for corresponding detailed qualifications to be incorporated in a number of separate articles, was adopted in principle by the Group, but without commitment to its wording and placement.

4. The Commission on Human Rights, at its forty-sixth session in 1990, in resolution 1990/38, took note of the Working Group's report (E/CN.4/1990/31) and decided to make available, prior to the forty-seventh session of the Commission, appropriate meeting time for the Working Group.

5. The Economic and Social Council, by resolution 1990/37 of 25 May 1990, authorized an open-ended working group to meet in a second session for a period of two weeks prior to the forty-seventh session of the Commission on Human Rights.

6. Consequently, the Working Group held 20 meetings from 29 October to 9 November 1990 and on 31 January 1991. The second session was opened on 29 October 1990 by the Under-Secretary-General for Human Rights who made an introductory statement. The following paragraphs of the present report relate to that second session.

ELECTION OF OFFICERS

7. At its first meeting, on 29 October 1990, the Working Group again elected Mr. Henry Steel (United Kingdom of Great Britain and Northern Ireland) as Chairman-Rapporteur.

PARTICIPATION

8. The meetings of the Working Group, which were open to all members of the Commission on Human Rights, were attended by representatives of the following

States members of the Commission: Belgium, Brazil, Canada, Cuba, France, Hungary, India, Italy, Japan, Nigeria, Philippines, Portugal, Sweden, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and United States of America.

9. The following States, non-members of the Commission on Human Rights, were represented by observers at the meetings of the Working Group: Algeria, Australia, Austria, Finland, Indonesia, Greece, New Zealand, Poland and Zaire.

10. The United Nations Centre for Social Development and Humanitarian Affairs was represented at the Working Group by an observer.

11. The International Labour Organisation and the World Health Organization were represented at the Working Group by observers.

12. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by observers at the meetings of the Working Group: Disabled Peoples' International, Friends World Committee for Consultation, International Association of Penal Law, International Commission of Jurists, International Educational Development, Inc., World Association for Psychosocial Rehabilitation, World Federation for Mental Health, World Psychiatric Association.

DOCUMENTS

13. The Working Group had before it the following documents:

E/CN.4/1990/WG.8/L.2	Provisional agenda
E/CN.4/1990/WG.8/WP.3	Working paper submitted by the Secretariat pursuant to ECOSOC resolution 1990/37
E/CN.4/1990/31	Report of the Working Group on its first session
E/CN.4/1990/53	Report of the Secretary-General submitted pursuant to Commission on Human Rights resolution 1989/40
E/CN.4/1990/53/Add.1	Information and comments submitted by Sweden, the World Medical Association, and the World Psychiatric Association
E/CN.4/1990/53/Add.2	Information and comments submitted by Australia, Austria and the World Association for Psychosocial Rehabilitation
E/CN.4/1990/53/Add.3	Information and comments submitted by Japan and the World Health Organization
E/CN.4/1990/53/Add.4	Information and comments submitted by Nigeria

E/CN.4/Sub.2/1988/23	Report of the sessional Working Group on the question of persons detained on the grounds of mental ill-health or suffering from mental disorder, including Draft Principles and Guarantees for the Protection of Mentally-ill Persons and for the Improvement of Mental Health Care. Report prepared by Mrs. Claire Palley
E/CN.4/Sub.2/1983/17/Rev.1	Principles, Guidelines and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill-Health or Suffering from Mental Disorder. Report prepared by Mrs. Erica-Irene A. Daes
E/CN.4/Sub.2/1983/17/Add.1	Annex III to Mrs. Daes' report (above).

ORGANIZATION OF WORK

14. At its first meeting, on 29 October 1990, the Working Group adopted its agenda, contained in document E/CN.4/1990/WG.8/L.2.

15. The Chairman-Rapporteur made an introductory statement, referring to the work accomplished at the first session of the Working Group. He proposed, and the Working Group agreed, that the most efficient way to proceed would be to put aside for later consideration the question of the title of the draft as a whole (as well as the headings of particular articles) and also the various definitions of terms contained in article 2 of the Sub-Commission's draft. The Working Group would revert to these matters after it had completed its consideration of all the substantive articles. At that point, the necessary decisions on title and headings would be taken in the light of the shape and content of the draft as a whole and it would then be possible to see more clearly what terms needed definition.

16. Accordingly, the Working Group decided to work its way, article by article, through the remainder of the draft submitted by the Sub-Commission (but leaving aside article 2, as explained above), modifying and replacing particular provisions in the Sub-Commission's text as might be necessary and agreed, and adopting agreed texts of the various articles as the work proceeded. It was accepted that, when the remaining text had been covered in this way, further consideration would have to be given to the placement of certain articles (and of particular paragraphs in certain articles). It was also accepted that decisions still to be taken on some of the later articles might make it necessary to reconsider some of the provisions adopted at its first session and to modify them so as to ensure consistency of approach, both as regards substance and as regards form and language. More generally, it was agreed that when the Working Group had completed its discussion of the draft as a whole, it would be desirable to arrange for the carrying out of a technical review to ensure economy and consistency of drafting and, in particular, the consistency of the draft with the relevant international instruments in the field of human rights.

CONSIDERATION AND DRAFTING OF ARTICLES

17. In the light of these decisions on its working methods, the Working Group embarked on its examination, revision and simplification, as necessary, of the remaining articles of the draft body of principles and guarantees, as submitted by the Sub-Commission and as supplemented by comments and suggestions from Governments, specialized agencies and non-governmental organizations contained in documents E/CN.4/1990/WG.8/WP.3 and E/CN.4/1990/53 and Add.1-4.

18. At its second meeting, on 29 October 1990, the Working Group reconsidered paragraph 2 of article 15 and adopted a revised version of that paragraph. 1/ At its 3rd to 12th meetings, from 30 October to 5 November 1990, it considered and adopted articles corresponding to articles 16 to 24 of the Sub-Commission's draft. In the light of its discussion of those articles, it also reconsidered and reformulated some of the provisions which it had adopted in its first session.

19. In the course of considering the articles referred to above, the Working Group again also formulated and adopted some new articles and paragraphs. On 30 October it formulated and adopted a new article relating to the protection of minors; and on 8 November 1990 it formulated and adopted a new article relating to the right of a person with a mental illness to live and work in the community. At its 7th to 10th meetings, on 1 and 2 November, it adopted a revised version of paragraph 5 of article 3 and a new paragraph 6 of that article and also a revised version of paragraph 1 of article 5. At its 12th meeting, on 5 November 1990, it reformulated paragraphs 2 and 3 of article 5.

20. When it had completed its first reading of the substantive articles, the Working Group considered article 2 (Definitions). It revised some of the definitions in the Sub-Commission's draft, deleted the definitions of "mental illness" and "severe mental illness", and formulated and inserted new definitions of the following terms: "counsel", "independent authority", "mental health care", "personal representative" and "review body". It then adopted article 2 as so amended.

21. At its 13th to 19th meetings, from 6 to 9 November 1990, the Working Group carried out a second reading of the whole text of the draft as adopted on the first reading. In the course of this second reading, it revised paragraphs 6, 13 and 14 of article 12 and also adopted a number of other changes to the text, principally for the sake of clarity or consistency - and, in particular, consistency with other relevant instruments. At the same time it adopted headings for each article. It then agreed that all of the articles (other than those dealing with the application of the instrument as a whole and the definition of terms used in it and also the "general limitation clause" - all of which, it decided, should feature as unnumbered introductory provisions) should be designated "Principles", should be rearranged in what the Working Group agreed was a more logical sequence, and should be renumbered accordingly, and that the whole instrument should be entitled "Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care". The Working Group also invited the Secretariat to arrange for the carrying out, before the adoption of the present report, of a technical review 2/ of the text of the whole instrument as otherwise adopted in the course of the second reading and to incorporate the product of that

review in the draft of the report which would be placed before the Working Group at its final meeting. The Secretariat has performed that task and the Working Group has approved the result.

22. The text of the complete draft instrument, in the form in which it has thus been adopted by the Working Group, is set out in annex I to the present report.

23. The Working Group also examined the draft "Introduction" which accompanied the Sub-Commission's text of the Principles (see E/CN.4/Sub.2/1988/23). The Working Group was of the opinion that such an "Introduction", useful though it was as an explanation of the origin, context and purpose of the Principles, could not properly form an integral part of the text of the Principles but that, if that text were in due course approved by the Commission for eventual adoption, on the Commission's recommendation, by the General Assembly, consideration should be given to publishing the "Introduction" separately in some appropriate form - perhaps in a United Nations press release - for the benefit of Governments and the public at large. With this possibility in mind, the Working Group revised the text of the "Introduction" so as to bring its terms into conformity with those of the Principles themselves. The text, as so revised, is accordingly set out in annex II to the present report.

24. At its 20th meeting, on 31 January 1991, the Working Group adopted the present report.

25. The Working Group considers that, with the submission of this, its second and final report, it has discharged the mandate originally entrusted to it by the Commission's resolution 1989/40 of 6 March 1989. The text of the body of Principles set out in annex I is the outcome of a wide-ranging, searching and conscientious discussion. At all stages in that discussion the participants have sought to ensure that the resulting formulations adequately reflect and accommodate all legal and social systems and all stages of development without sacrificing the essential needs and basic rights of the individual human beings ultimately concerned. The Working Group ventures to hope and believe that the text as a whole, if it is eventually endorsed and implemented by the international community, will constitute an effective contribution to the protection in all countries of persons with mental illness and to the improvement of mental health care. In that hope and belief the Working Group now submits the text in annex I to the Commission and respectfully invites the Commission to transmit it, with the Commission's own recommendation, through the Economic and Social Council, for adoption by the General Assembly.

Notes

1/ Here and elsewhere in paragraphs 18-21 of the present report, references to numbered articles and paragraphs are to those articles and paragraphs as in the Sub-Commission's text or in the Working Group's first report (E/CN.4/1990/31).

2/ See paragraph 16 above.

ANNEXES

Annex I

PRINCIPLES FOR THE PROTECTION OF PERSONS WITH MENTAL ILLNESS AND FOR THE IMPROVEMENT OF MENTAL HEALTH CARE

APPLICATION

These Principles shall be applied without discrimination of any kind such as on grounds of disability, race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth.

DEFINITIONS

In these Principles:

"counsel" means a legal or other qualified representative;

"independent authority" means a competent and independent authority prescribed by domestic law;

"mental health care" includes analysis and diagnosis of a person's mental condition, and treatment, care and rehabilitation for a mental illness or suspected mental illness;

"mental health facility" means any establishment, or any unit of an establishment, which as its primary function provides mental health care;

"mental health practitioner" means a medical doctor, clinical psychologist, nurse, social worker or other appropriately trained and qualified person with specific skills relevant to mental health care;

"patient" means a person receiving mental health care and includes all persons who are admitted to a mental health facility;

"personal representative" means a person charged by law with the duty of representing a patient's interests in any specified respect or of exercising specified rights on the patient's behalf, and includes the parent or legal guardian of a minor unless otherwise provided by domestic law;

"the review body" means the body established in accordance with Principle 17 to review the involuntary admission or retention of a patient in a mental health facility.

GENERAL LIMITATION CLAUSE

The exercise of the rights set forth in these Principles may be subject only to such limitations as are prescribed by law and are necessary to protect the health or safety of the person concerned or of others or otherwise to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Principle 1

FUNDAMENTAL FREEDOMS AND BASIC RIGHTS

1. All persons have the right to the best available mental health care, which shall be part of the health and social care system.

2. All persons with a mental illness, or who are being treated as such persons, shall be treated with humanity and respect for the inherent dignity of the human person.

3. All persons with a mental illness, or who are being treated as such persons, have the right to protection from economic, sexual and other forms of exploitation, physical or other abuse and degrading treatment.

4. There shall be no discrimination on the grounds of mental illness. "Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory. Discrimination does not include any distinction, exclusion or preference undertaken in accordance with the provisions of these Principles and necessary to protect the human rights of a person with a mental illness or of other individuals.

5. Every person with a mental illness shall have the right to exercise all civil, political, economic, social and cultural rights as recognized in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and in other relevant instruments such as the Declaration on the Rights of Disabled Persons and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

6. Any decision that, by reason of his or her mental illness, a person lacks legal capacity, and any decision that, in consequence of such incapacity, a personal representative shall be appointed, shall be made only after a fair hearing by an independent and impartial tribunal established by domestic law. The person whose capacity is in issue shall be entitled to be represented by a counsel. If the person whose capacity is in issue does not himself or herself secure such representation it shall be made available without payment by that person to the extent that he or she does not have sufficient means to pay for it. The counsel shall not in the same proceedings represent a mental health facility or its personnel and shall not also represent a member of the family of the person whose capacity is in issue unless the tribunal is satisfied that there is no conflict of interest. Decisions regarding capacity and the need for a personal representative shall be reviewed at reasonable intervals prescribed by domestic law. The person whose capacity is in issue, his or her personal representative, if any, and any other interested person shall have the right to appeal to a higher court against any such decision.

7. Where a court or other competent tribunal finds that a person with mental illness is unable to manage his or her own affairs, measures shall be taken, so far as is necessary and appropriate to that person's condition, to ensure the protection of his or her interests.

Principle 2

PROTECTION OF MINORS

Special care should be given within the purposes of these Principles and within the context of domestic law relating to the protection of minors to protect the rights of minors, including, if necessary, the appointment of a personal representative other than a family member.

Principle 3

LIFE IN THE COMMUNITY

Every person with a mental illness shall have the right to live and work, as far as possible, in the community.

Principle 4

DETERMINATION OF MENTAL ILLNESS

1. A determination that a person has a mental illness shall be made in accordance with internationally accepted medical standards.

2. A determination of mental illness shall never be made on the basis of political, economic or social status, or membership of a cultural, racial or religious group, or any other reason not directly relevant to mental health status.

3. Family or professional conflict, or non-conformity with moral, social, cultural or political values or religious beliefs prevailing in a person's community, shall never be a determining factor in diagnosing mental illness.

4. A background of past treatment or hospitalization as a patient shall not of itself justify any present or future determination of mental illness.

5. No person or authority shall classify a person as having, or otherwise indicate that a person has, a mental illness except for purposes directly relating to mental illness or the consequences of mental illness.

Principle 5

MEDICAL EXAMINATION

No person shall be compelled to undergo medical examination with a view to determining whether or not he or she has a mental illness except in accordance with a procedure authorized by domestic law.

Principle 6

CONFIDENTIALITY

The right of confidentiality of information concerning all persons to whom these Principles apply shall be respected.

Principle 7

ROLE OF COMMUNITY AND CULTURE

1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.

2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her home or the home of his or her relatives or friends and shall have the right to return to the community as soon as possible.

3. Every patient shall have the right to treatment suited to his or her cultural background.

Principle 8

STANDARDS OF CARE

1. Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.

2. Every patient shall be protected from harm, including unjustified medication, abuse by other patients, staff or others or other acts causing mental distress or physical discomfort.

Principle 9

TREATMENT

1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.

2. The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.

3. Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.

4. The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

Principle 10

MEDICATION

1. Medication shall meet the best health needs of the patient and shall be given to a patient only for therapeutic or diagnostic purposes and shall never

be administered as a punishment, or for the convenience of others. Subject to the provisions of paragraph 15 of Principle 11, mental health practitioners shall only administer medication of known or demonstrated efficacy.

2. All medication shall be prescribed by a mental health practitioner authorized by law and shall be recorded in the patient's records.

Principle 11

CONSENT TO TREATMENT

1. No treatment shall be given to a patient without his or her informed consent, except as provided for in paragraphs 6, 7, 8, 13 and 15.

2. Informed consent is consent obtained freely without threats or improper inducements after appropriate disclosure to the patient of adequate and understandable information in a form and language understood by the patient on:

(a) The diagnostic assessment;

(b) The purpose, method, likely duration and expected benefit of the proposed treatment;

(c) Alternative modes of treatment, including those less intrusive; and

(d) Possible pain or discomfort, risks and side-effects of the proposed treatment.

3. A patient may request the presence of a person or persons of the patient's choosing during the procedure for granting consent.

4. A patient has the right to refuse or stop treatment except as provided for in paragraphs 6, 7, 8, 13 and 15. The consequences of refusing or stopping treatment must be explained to the patient.

5. A patient shall never be invited or induced to waive the right to informed consent. If the patient should seek to do so, it shall be explained to the patient that the treatment cannot be given without informed consent.

6. Except as provided in paragraphs 7, 8, 12, 13, 14 and 15 a proposed plan of treatment may be given to a patient without a patient's informed consent if the following conditions are satisfied:

(a) The patient is, at the relevant time, held as an involuntary patient;

(b) An independent authority, having in its possession all relevant information, including the information specified in paragraph 2, is satisfied that, at the relevant time, the patient lacks the capacity to give or withhold informed consent to the proposed plan of treatment or, if domestic legislation so provides, that, having regard to the patient's own safety or the safety of others, the patient unreasonably withholds such consent; and

(c) The independent authority is satisfied that the proposed plan of treatment is in the best interests of the patient's health needs.

7. Paragraph 6 does not apply to a patient with a personal representative empowered by law to consent to treatment for the patient; but except as provided in paragraphs 12, 13, 14 and 15 treatment may be given to such a patient without his or her informed consent if the personal representative, having been given the information described in paragraph 2, consents on the patient's behalf.

8. Except as provided in paragraphs 12, 13, 14 and 15 treatment may also be given to any patient without the patient's informed consent if a qualified mental health practitioner authorized by law determines that it is urgently necessary in order to prevent immediate or imminent harm to the patient or to other persons. Such treatment shall not be prolonged beyond the period which is strictly necessary for this purpose.

9. Where any treatment is authorized without the patient's informed consent, every effort shall nevertheless be made to inform the patient about the nature of the treatment and any possible alternatives, and to involve the patient as far as practicable in the development of the treatment plan.

10. All treatment shall be immediately recorded in the patient's medical records, with an indication of whether involuntary or voluntary.

11. Physical restraint or involuntary seclusion of a patient shall not be employed except in accordance with the officially approved procedures of the mental health facility and only when it is the only means available to prevent immediate or imminent harm to the patient or others. It shall not be prolonged beyond the period which is strictly necessary for this purpose. All instances of physical restraint or involuntary seclusion, the reasons for them, and their nature and extent shall be recorded in the patient's medical record. A patient who is restrained or secluded shall be kept under humane conditions and be under the care and close and regular supervision of qualified members of the staff. A personal representative, if any and if relevant, shall be given prompt notice of any physical restraint or involuntary seclusion of the patient.

12. Sterilization shall never be carried out as a treatment for mental illness.

13. A major medical or surgical procedure may be carried out on a person with mental illness only where it is permitted by domestic law, where it is considered that it would best serve the health needs of the patient and where the patient gives informed consent, except that, where the patient is unable to give informed consent, the procedure shall be authorized only after independent review.

14. Psychosurgery and other intrusive and irreversible treatments for mental illness shall never be carried out on a patient who is an involuntary patient in a mental health facility and, to the extent that domestic law permits them to be carried out, they may be carried out on any other patient only where the patient has given informed consent and an independent external body has satisfied itself that there is genuine informed consent and that the treatment best serves the health needs of the patient.

15. Clinical trials and experimental treatment shall never be carried out on any patient without informed consent, except that a patient who is unable to

give informed consent may be admitted to a clinical trial or given experimental treatment but only with the approval of a competent, independent review body specifically constituted for this purpose.

16. In the cases specified in paragraphs 6, 7, 8, 13, 14 and 15, the patient or his or her personal representative, or any interested person, shall have the right to appeal to a judicial or other independent authority concerning any treatment given to him or her.

Principle 12

NOTICE OF RIGHTS

1. A patient in a mental health facility shall be informed as soon as possible after admission, in a form and a language which the patient understands, of all his or her rights in accordance with these Principles and under domestic law, which information shall include an explanation of those rights and how to exercise them.

2. If and for so long as a patient is unable to understand such information, the rights of the patient shall be communicated to the personal representative, if any and if appropriate, and to the person or persons best able to represent the patient's interests and willing to do so.

3. A patient who has the necessary capacity has the right to nominate a person who should be informed on his or her behalf as well as a person to represent his or her interests to the authorities of the facility.

Principle 13

RIGHTS AND CONDITIONS IN MENTAL HEALTH FACILITIES

1. Every patient in a mental health facility shall, in particular, have the right to full respect for his or her:

(a) Recognition everywhere as a person before the law;

(b) Privacy;

(c) Freedom of communication which includes freedom to communicate with other persons in the facility; freedom to send and receive uncensored private communications; freedom to receive, in private, visits from a counsel or personal representative and, at all reasonable times, from other visitors; and freedom of access to postal and telephone services and to newspapers, radio and television;

(d) Freedom of religion or belief.

2. The environment and living conditions in mental health facilities shall be as close as possible to those of the normal life of persons of similar age and in particular shall include:

(a) Facilities for recreational and leisure activities;

(b) Facilities for education;

(c) Facilities to purchase or receive items for daily living, recreation and communication;

(d) Facilities, and encouragement to use such facilities, for a patient's engagement in active occupation suited to his or her social and cultural background, and for appropriate vocational rehabilitation measures to promote reintegration in the community. These measures should include vocational guidance, vocational training and placement services to enable patients to secure or retain employment in the community.

3. In no circumstances shall a patient be subject to forced labour. Within the limits compatible with the needs of the patient and with the requirements of institutional administration, a patient shall be able to choose the type of work he or she wishes to perform.

4. The labour of a patient in a mental health facility shall not be exploited. Every such patient shall have the right to receive the same remuneration for any work which he or she does as would, according to domestic law or custom, be paid for such work to a non-patient. Every such patient shall in any event have the right to receive a fair share of any remuneration which is paid to the mental health facility for his or her work.

Principle 14

RESOURCES FOR MENTAL HEALTH FACILITIES

1. A mental health facility shall have access to the same level of resources as any other health establishment, and in particular:

(a) Qualified medical and other appropriate professional staff in sufficient numbers and with adequate space to provide each patient with privacy and a programme of appropriate and active therapy;

(b) Diagnostic and therapeutic equipment for the patient;

(c) Appropriate professional care; and

(d) Adequate, regular and comprehensive treatment, including supplies of medication.

2. Every mental health facility shall be inspected by the competent authorities with sufficient frequency to ensure that the conditions, treatment, and care of patients comply with these Principles.

Principle 15

ADMISSION PRINCIPLES

1. Where a person needs treatment in a mental health facility, every effort shall be made to avoid involuntary admission.

2. Access to a mental health facility shall be administered in the same way as access to any other facility for any other illness.

3. Every patient not admitted involuntarily shall have the right to leave the mental health facility at any time unless the criteria for his or her retention as an involuntary patient, as set forth in Principle 16, apply, and he or she shall be informed of that right.

Principle 16

INVOLUNTARY ADMISSION

1. A person may (a) be admitted involuntarily to a mental health facility as a patient; or (b) having already been admitted voluntarily as a patient, be retained as an involuntary patient in the mental health facility, if and only if a qualified mental health practitioner authorized by law for that purpose determines, in accordance with Principle 4, that that person has a mental illness and considers:

(i) That, because of that mental illness, there is a serious likelihood of immediate or imminent harm to that person or to other persons; or

(ii) That, in the case of a person whose mental illness is severe and whose judgement is impaired, failure to admit or retain that person is likely to lead to a serious deterioration in his or her condition or will prevent the giving of appropriate treatment which can only be given by admission to a mental health facility in accordance with the principle of the least restrictive alternative.

In the case referred to in subparagraph (ii), a second such mental health practitioner, independent of the first, should be consulted where possible. If such consultation takes place, the involuntary admission or retention may not take place unless the second mental health practitioner concurs.

2. Involuntary admission or retention shall initially be for a short period as specified by domestic law for observation and preliminary treatment pending review of the admission or retention by the review body. The grounds of the admission shall be communicated to the patient without delay and the fact of the admission and the grounds for it shall also be communicated promptly and in detail to the review body, to the patient's personal representative, if any, and, unless the patient objects, to the patient's family.

3. A mental health facility may receive involuntarily admitted patients only if the facility has been designated to do so by a competent authority prescribed by domestic law.

Principle 17

REVIEW BODY

1. The review body shall be a judicial or other independent and impartial body established by domestic law and functioning in accordance with procedures laid down by domestic law. It shall, in formulating its decisions, have the assistance of one or more qualified and independent mental health practitioners and take their advice into account.

2. The review body's initial review, as required by Principle 16.2, of a decision to admit or retain a person as an involuntary patient shall take

place as soon as possible after that decision and shall be conducted in accordance with simple and expeditious procedures as specified by domestic law.

3. The review body shall periodically review the cases of involuntary patients at reasonable intervals as specified by domestic law.

4. An involuntary patient may apply to the review body for release or voluntary status, at reasonable intervals as specified by domestic law.

5. At each review the review body shall consider whether the criteria for involuntary admission set out in Principle 16.1 are still satisfied, and, if not, the patient shall be discharged as an involuntary patient.

6. If at any time the mental health practitioner responsible for the case is satisfied that the conditions for the retention of a person as an involuntary patient are no longer satisfied, he or she shall order the discharge of that person as such a patient.

7. A patient or his personal representative or any interested person shall have the right to appeal to a higher court against a decision that the patient be admitted to, or be retained in, a mental health facility.

Principle 18

PROCEDURAL SAFEGUARDS

1. The patient shall be entitled to choose and appoint a counsel to represent the patient as such, including representation in any complaint procedure or appeal. If the patient does not secure such services, a counsel shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

2. The patient shall also be entitled to the assistance, if necessary, of the services of an interpreter. Where such services are necessary and the patient does not secure them, they shall be made available without payment by the patient to the extent that the patient lacks sufficient means to pay.

3. The patient and the patient's counsel may request and produce at any hearing an independent mental health report and any other reports and oral, written and other evidence that are relevant and admissible.

4. Copies of the patient's records and any reports and documents to be submitted shall be given to the patient and to the patient's counsel except in special cases where it is determined that a specific disclosure to the patient would cause serious harm to the patient's health or put at risk the safety of others. As domestic law may provide, any document not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any part of a document is withheld from a patient, the patient or the patient's counsel, if any, shall receive notice of the withholding and the reasons for it and it shall be subject to judicial review.

5. The patient and the patient's personal representative and counsel shall be entitled to attend, participate and be heard personally in any hearing.

6. If the patient or the patient's personal representative or counsel requests that a particular person be present at a hearing, that person shall be admitted unless it is determined that the person's presence could cause serious harm to the patient's health or put at risk the safety of others.

7. Any decision whether the hearing or any part of it shall be in public or in private and may be publicly reported shall give full consideration to the patient's own wishes, to the need to respect the privacy of the patient and of other persons and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

8. The decision arising out of the hearing and the reasons for it shall be expressed in writing. Copies shall be given to the patient and his or her personal representative and counsel. In deciding whether the decision shall be published in whole or in part, full consideration shall be given to the patient's own wishes, to the need to respect his or her privacy and that of other persons, to the public interest in the open administration of justice and to the need to prevent serious harm to the patient's health or to avoid putting at risk the safety of others.

Principle 19

ACCESS TO INFORMATION

1. A patient (which term in this Principle includes a former patient) shall be entitled to have access to the information concerning the patient in his or her health and personal records maintained by a mental health facility. This right may be subject to restrictions in order to prevent serious harm to the patient's health and avoid putting at risk the safety of others. As domestic law may provide, any such information not given to the patient should, when this can be done in confidence, be given to the patient's personal representative and counsel. When any of the information is withheld from a patient, the patient or the patient's counsel, if any, shall receive notice of the withholding and the reasons for it and it shall be subject to judicial review.

2. Any written comments by the patient or the patient's personal representative or counsel shall, on request, be inserted in the patient's file.

Principle 20

CRIMINAL OFFENDERS

1. This Principle applies to persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such an illness.

2. All such persons should receive the best available mental health care as provided in Principle 1. These Principles shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances. No such modifications and exceptions shall prejudice the persons' rights under the instruments noted in Principle 1.5.

3. Domestic law may authorize a court or other competent authority, acting on the basis of competent and independent medical advice, to order that such persons be admitted to a mental health facility.

4. Treatment of persons determined to have a mental illness shall in all circumstances be consistent with Principle 11.

Principle 21

COMPLAINTS

Every patient and former patient shall have the right to make a complaint through procedures as specified by domestic law.

Principle 22

MONITORING AND REMEDIES

States shall ensure that appropriate mechanisms are in force to promote compliance with these Principles, for the inspection of mental health facilities, for the submission, investigation and resolution of complaints and for the institution of appropriate disciplinary or judicial proceedings for professional misconduct or violation of the rights of a patient.

Principle 23

IMPLEMENTATION

1. States should implement these Principles through appropriate legislative, judicial, administrative, educational and other measures which they shall review periodically.

2. States shall make these Principles widely known by appropriate and active means.

Principle 24

SCOPE OF PRINCIPLES RELATING TO MENTAL HEALTH FACILITIES

These Principles apply to all persons who are admitted to a mental health facility.

Principle 25

SAVING OF EXISTING RIGHTS

There shall be no restriction upon or derogation from any existing rights of patients, including rights recognized in applicable international or domestic law, on the pretext that these Principles do not recognize such rights or that they recognize them to a lesser extent.

Annex II

[INTRODUCTION]

International interest in the treatment of persons with mental illness has increased in recent years. The United Nations has for many years been concerned with the protection of disadvantaged persons whose rights are often restricted. Persons with mental illness are especially vulnerable and require particular protection. It is essential that their rights be clearly defined and established in accordance with the International Bill of Human Rights.

Scientific and technological developments provide increasing opportunities for better conditions of life. However, they can give rise to social problems as well as threaten fundamental freedoms and human rights. Similarly, medical and psychotherapeutic technology can constitute a threat to the physical and intellectual integrity of the individual.

There have been disturbing reports that scientific and technological products and methods have been misused, especially in the treatment of persons detained on grounds of mental illness.

Procedures under mental health law, including those governing access to independent and impartial bodies, are of cardinal importance to the freedom of patients, whose human and legal rights should be protected by every means.

The Principles are not intended to cover every legal, medical, social and ethical aspect related to a patient's admission to an institution or his or her detention, treatment, discharge and rehabilitation in the community. In view of the great variety of legal, medical, social, economic and geographical conditions of the world community, it is obvious that not all the Principles are capable of immediate application in all countries at all times.

The Principles are concerned with the protection of persons with mental illness and with the improvement of mental health care. They focus in particular on the small minority of patients suffering from mental illness who need to be admitted involuntarily to a mental health facility. The large majority of people with mental illness who receive treatment are not admitted to a hospital. Of the small minority who require admission, most enter hospital on a voluntary basis. Only a few require involuntary hospitalization. Facilities for the care, support, treatment and rehabilitation of persons suffering from mental illness should, as far as possible, be provided in the community in which they live. Admission to a mental health facility should therefore take place only when such community facilities are not appropriate or not available. The provision of more resources to make alternative, less restrictive, mental health services available will help to ensure that the Principles are easier to adhere to.

While it is important to protect mentally ill persons from abuse and to ensure that the label of mental illness is not an excuse for inappropriately limiting the rights of people, it is equally important to protect mentally ill persons from neglect and to ensure that their needs for care and treatment, especially those of persons integrated in the community, are satisfied.

The Principles are intended to serve, inter alia, as a guide to Governments, specialized agencies, national, regional and international organizations, competent non-governmental organizations and individuals and to stimulate a constant endeavour to overcome economic and other practical difficulties in the way of their adoption and application, since they represent minimum United Nations standards for the protection of fundamental freedoms and human and legal rights of persons with mental illness.

Accordingly, Governments should consider adapting their laws, if necessary, to the Principles or should adopt provisions in accordance with them when introducing new relevant legislation. The Principles set the minimum United Nations standards for the protection of patients.

- - - - -